NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

Robert Addie, Jorge Perez, and Jason Taylor,	)	
Plaintiffs,	)	
v.	)	Civ. No. 2004-135
Christian Kjaer, Helle Bundgaard, Steen Bundgaard, John Kund Fürst, Kim Fürst, Nina Fürst, Premier Title Company, Inc. f/k/a First American Title Company Inc., and Kevin F. D'Amour	)	
Defendants.	)	

ATTORNEYS:

Gregory H. Hodges, Esq.
St. Thomas, U.S.V.I.
For the plaintiffs,

Carol G. Hurst, Esq.
St. Thomas, U.S.V.I.
For defendants Christian Kjaer, Helle Bundgaard, Steen Bundgaard, John Kund Fürst, Kim Fürst, and Nina Fürst,

John K. Dema, Esq.
St. Corix, U.S.V.I.
For defendant Premier Title Company, Inc. f/k/a First American Title Company, Inc.,

Maria Tankenson Hodge, Esq.
St. Thomas, U.S.V.I.
For defendant Kevin D'Amour.

MEMORANDUM

Gomez, J.

Defendant Premier Title Company, Inc. ["Premier Title"] has filed a motion requesting that this Court reconsider its May 10, 2005, order denying Premier Title's motion to stay and compel arbitration. For the reasons stated below, Premier Title's motion will be denied.

I. ANALYSIS

As more fully set forth in this Court's May 10, 2005, memorandum, this litigation arises from a failed attempt by the plaintiffs to purchase land from certain defendants named in this action. *See Addie v. Kjaer*, 2005 WL 1130224 (D.V.I. 2005). Premier Title previously argued that, under the escrow agreement and contracts of sale involved in the transaction, it has a right to arbitrate this dispute. The Court disagreed, ruling that the litigation clauses in the contracts of sale demanded that the matter be resolved in this Court. *Id.* Premier Title now seeks reconsideration of that ruling.

Motions for reconsideration are governed by Local Rule of Civil Procedure 7.4, which provides:

> A party may file a motion asking a judge or magistrate judge to reconsider an order or decision made by that judge or magistrate judge. Such motion shall be filed within ten

> (10) days after the entry of the order or decision unless the time is extended by the court. . . . A motion to reconsider shall be based on: 1. intervening change in controlling law; 2. availability of new evidence, or; 3. the need to correct clear error or prevent manifest injustice.

LRCi 7.4. The purpose of a motion for reconsideration "is to correct manifest errors of law or fact or to present newly discovered evidence." *Harsco Corp. v. Zlotnicki,* 779 F.2d 906, 909 (3d Cir. 1985). A motion for reconsideration "is not a vehicle for registering disagreement with the court's initial decision, for rearguing matters already addressed by the court, or for raising arguments that could have been raised before but were not." *Bostic v. AT&T of the Virgin Islands,* 312 F. Supp. 2d 731, 733 (D.V.I. 2004). As the *Bostic* Court noted, ". . . Local Rule 7.4 affirms the common understanding that reconsideration is an 'extraordinary' remedy not to be sought reflexively or used as a substitute for appeal." *Id.*

Premier Title argues the above standard for reconsideration has been met because "the Court erred by finding that a conflict existed between the 'arbitration' provision in the Escrow Agreement and the 'litigation' provision in the Contracts of Sale." (Mot. at 2.) Premier Title has previously made this argument, and it was rejected in the Court's May 10, 2005 decision. Moreover, the legal authority Premier Title cites in its motion for reconsideration does not demonstrate that this

Court made a manifest error of law in denying its motion.

Premier Title principally relies on *Personal Security & Safety Systems v. Motorola, Inc.*, 297 F.3d 388 (5th Cir. 2002), to reargue that the litigation clause in the contracts of sale does not conflict with the arbitration clause in the escrow agreement. In *Motorola*, the appellant argued that an arbitration provision in a product development agreement with the appellee required the parties to arbitrate a claim arising under a separate but contemporaneously executed stock purchase agreement. *Id.* at 390-91. After determining that the two agreements were part of the same transaction and therefore must be interpreted together, the *Motorola* Court held that the arbitration clause governed disputes arising under both agreements:

> Where the parties include a broad arbitration provision in an agreement that is 'essential' to the overall transaction, we will presume that they intended the clause to reach all aspects of the transaction--including those aspects governed by other contemporaneously executed agreements that are part of the same transaction. Thus, <u>in the absence of a contrary expression of intent in the Stock Purchase Agreement</u>, the arbitration provision in the Product Development Agreement covers all disputes related to the subject matter of the entire transaction between [the appellee] and [the appellant].

Id. at 394-95 (emphasis added.)

The above-quoted holding from *Motorola* supports rather than detracts from this Court's decision, as it explicitly recognizes that the parties could have intended in another agreement to

solve their disputes through a means other than arbitration. Here, the parties clearly did express an intent contrary to the arbitration provision in the escrow agreement when they agreed to the litigation provision contained in paragraph fourteen of the contracts of sale. *See Addie*, 2005 WL 1130224 at *3. As this Court has previously established, the parties also expressly intended the terms of the contracts of sale to govern over conflicting terms in the escrow agreement.

Moreover, neither *Motorola* nor the other authority Premier Title cites indicate that this Court erred in finding that the arbitration and litigation clauses did indeed conflict. As this Court has previously determined, the litigation clauses at issue here are not open-ended forum selection clauses designed to merely select venue without demanding a particular means of dispute resolution within that venue. Rather, the wording employed in the litigation clauses shows that the parties intended to litigate their dispute in the usual sense of the term, i.e. through formal proceedings in this tribunal. *Cf. Patten Securities Inc. v. Diamond Greyhound & Genetics, Inc.*, 819 F.2d 400, 407 (3d Cir. 1987) (example of an open-ended forum selection clause that selects a particular venue but is ambiguous as to whether the parties must settle their dispute through arbitration or litigation).

Given the foregoing, Premier Title has not demonstrated that this Court's May 10, 2005, decision must be revisited due to a clear error of law, to prevent manifest injustice, or for any of the other reasons set forth in Local Rule of Civil Procedure 7.4. As such, Premier Title's motion will be denied. An appropriate order follows.

ENTERED this 13th day of June, 2005.

For the Court

_____/s/_____
Curtis V. Gomez
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By:_____/s/_____
Deputy Clerk

Copies to:
Hon. G.W. Barnard
Gregory H. Hodges, Esq.
Carol G. Hurst, Esq.
John K. Dema, Esq.
Maria Tankenson Hodge, Esq.
Ms. Jackson
Jeffrey Corey

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For defendant Premier Title Company, Inc. f/k/a First American Title Company, Inc.,

Maria Tankenson Hodge, Esq.
St. Thomas, U.S.V.I.
For defendant Kevin D'Amour.

ORDER

Gomez, J.

For the reasons stated in the accompanying memorandum of even date, the motion to reconsider filed by defendant Premier Title Company, Inc. is hereby **denied.**

ENTERED this 13th day of June, 2005.

For the Court

_____/s/_____
Curtis V. Gomez
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By:_____/s/_____
Deputy Clerk

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